

EX PARTE OR LATE FILED

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DOCKET # 96-138000

July 17, 1996

William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W. -- Room 222  
Washington, DC 20554

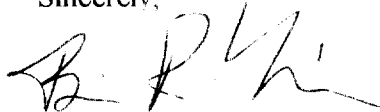
Re: Ex Parte Consensus Comments in CC Docket No. 96-98  
(Implementation of the Local Competition Provisions  
in the Telecommunications Act of 1996)

Dear Mr. Caton:

Enclosed for filing in the above proceeding is an original and 16 copies of the  
"Telecommunications Industry Ex Parte Consensus Comments"

To acknowledge the Commission's receipt of these documents, please place the  
Commission's stamp on the enclosed duplicate original and remit the same to bearer.

Sincerely,



Brian R. Moir

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BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions in the Telecommunications Act	)	
of 1996	)	
	)	

**TELECOMMUNICATIONS INDUSTRY  
EX PARTE CONSENSUS COMMENTS**

Many of the leading telecommunications organizations and firms representing the residential consumer, business consumer, competitive long distance, and telemessaging sectors of this nation's economy,<sup>1</sup> submit these Ex Parte Consensus Comments on the issues relating to the implementation of competition into the local telecommunications marketplace raised in this proceeding.<sup>2</sup> These Telecommunications Industry Ex Parte Consensus Comments are written at the invitation of the Commission whereupon it called for diverse parties to make joint filings

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<sup>1</sup> These Telecommunications Industry Ex Parte Consensus Comments are jointly submitted by the America's Carriers Telecommunication Association (ACTA), American Petroleum Institute (API), Association of Telemessaging Services International (ATSI), Call America, Call America Business Communications, Chadwick Telephone, Computercations Plus Company, Consumer Federation of America (CFA), Greater Washington Area Chapter of The Cultural Environment Movement, International Communications Association (ICA), Michigan Consumer Federation, National Retail Federation (NRF), New York Citizens Utility Board (New York CUB), Telephone Electronics Corporation, U.S. Long Distance Corporation, US Wats, and Washington Telecommunications Association for Cost-based and Equitable Rates (TRACER), (hereinafter referred to as Consensus Commenters). See Attachment A for a description of each of the Consensus Commenters.

<sup>2</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, NPRM, CC Docket No. 96-98, FCC 96-182, released April 19, 1996

covering principles that they commonly agree upon. These Consensus Comments present the Commission with the compromises and balances that the Commission should seek to strike in implementing the interconnection provisions of the Telecommunications Act of 1996.<sup>3</sup>

The Consensus Commenters believe that these comments represent some of the significant principles necessary for achieving a competitive telecommunications environment. They represent general statements of core principles, well founded in economics and law, which the Consensus Commenters believe are necessary, but not sufficient, for the development of competition in the local exchange market.<sup>4</sup> These consensus core principles cannot and should not be compromised. They are the shield for consumers and the related telecommunications markets against the expansion of the existing telephone monopolies, and a tool for breaking down those monopolies by facilitating the potential for entry by would-be competitors. To compromise these consensus core principles in any way would be to risk the surrender of the telecommunications industry to a monopoly dominated market structure with, at best, minor fringe competitors. Not only would this represent a failure for the Commission in its attempts to implement Congress' historic Telecom Act, it would represent a Commission failure to preserve earlier competitive market achievements. Even worse, it would be a failure for the very historic Telecommunications Act of 1996 itself.

These consensus core principles are -- without question -- realizable and should be acceptable to every diverse corner of this industry, including the segments of the incumbent local

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<sup>3</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 stats. 56 ("Telecom Act")

<sup>4</sup> Additional requirements necessary for the development of competition in the local exchange market beyond these core principles have been covered in individual submissions made by these and other parties to this and related proceedings.

exchange industry that are willing and able to compete with all new entrants on fair and reasonable terms. The diversity of the co-signers of these Ex Parte Consensus Comments demonstrates the broad support for these general principles.

What follows is a brief description of each core principle, a citation to the relevant section of the NPRM, and a brief explanation of that core principle and why it is in the public interest that it be adopted.

**Principle #1:** The Commission should adopt a national policy and regulatory framework for the implementation of the interconnection provisions of the Telecommunications Act of 1996 at both the state and federal levels. This would assure that such implementation would be done on a fair and expeditious basis in a uniform manner for both interstate and intrastate services. NPRM at ¶¶25-41, 50-51.

National standards are required to assure that all consumers receive the benefits of competition. A state-by-state patchwork quilt of regulatory requirements and standards will make it more difficult for carriers to enter local telephone markets on a consistent basis in all states. Such a patchwork quilt would also increase the costs of implementation of the Telecommunications Act of 1996. Both of these anticompetitive outcomes flow from the fact that telecommunications equipment, systems, intercarrier processing, as well as nationwide consumer networks, are designed based on national standards. The Telecom Act makes it clear that the Commission will establish sound interconnection requirements (47 U.S.C. §206-208) and assure that states properly comply with them when undertaking their appropriate regulatory responsibilities. Telecom Act at Sections 271-272. Only the establishment of national standards can provide the uniformity necessary for carrying out these mandates in the time frames allotted in the Telecom Act. Telecom Act at Section 271(d)(3) [90 days] and 47 USC §208(b), as amended by the Telecom Act [complaints resolved in five months]. These factors, taken together with

Section 253 [FCC allowed to preempt barriers to entry], should dictate the establishment of a national regulatory framework for implementing Sections 251 of the Communications Act.

**Principle #2:** All “telecommunications providers” (including long distance service providers which “self-provide” access) must be allowed to purchase unbundled elements, collocation, and interconnection. NPRM at ¶¶49,90,159-165.

The Telecom Act is clear that the term “telecommunications providers” encompasses “interexchange carriers.” The Telecom Act is also clear that unbundled elements, collocation, and interconnection can be requested by a “telecommunications provider.” Telecom Act at §251(c)(2) and (3). Finally, the Telecom Act states that such facilities and equipment may be used “for the transmission of telephone exchange service and exchange access.” Id. at §251(c)(2)(A).

The Commission should reject any attempt to limit interconnection, unbundled elements, or mutual compensation arrangements to carriers who provide bundled telephone exchange service (an intrastate service) and exchange access (which can be solely interstate). NPRM at ¶162. Such a condition of purchase would create an anticompetitive barrier to entry in violation of the Telecom Act (§253) because it would limit the ability of telecommunications providers from purchasing these essential services (which they do in general, today under the Commission’s interconnection rules). Thus, Section 251(a)(2)(A) cannot be read to limit purchasers of these items to those who provide local exchange services together with exchange access.

There should also be no limitation on who may purchase interconnection, unbundled elements, and mutual compensation service. Any entity, including an interexchange carrier which self-provides access, should be allowed to seek access to these features and network elements. NPRM at ¶163. This conclusion is compelled by the express language of Section 251. Section

251 identifies the duties owed by incumbent LECs, it does not impose restrictions on competing telecommunications providers.<sup>5</sup>

The Commission reads the definition of “exchange access” as applying to the “offering of access.” NPRM at ¶162. However, the statute does not limit the definition of exchange access to an offering only to others. Such a limitation creates an artificial, distorting distinction between carriers which offer to access to others (while providing it to themselves) and those which provide only to themselves.

**Principle #3:** At a minimum, the Commission should adopt AT&T’s 11 points of interconnection for determining where interconnection and unbundling should occur. The burden should be on the LEC as to why it cannot reasonably provide interconnection at any other requested point or provide a requested unbundling of a specific component. NPRM at ¶¶49-116

AT&T has proposed a list of a minimum set of unbundled network elements that are critical to the development of meaningful competitive alternatives to monopoly local telephone services. This minimum set of unbundled network elements consists of 11 initial elements that include the loop distribution, loop concentrator, loop feeder, central office switch, operator services, dedicated transport, common transport, access/tandem switch, signaling links, signal transfer point, and services control point. This list appears to be a reasonable starting point for defining the minimum set of the points of interconnection between the local exchange carrier and other carriers. The Consensus Commenters agree with the Commission (NPRM at ¶77) that this list of elements should necessarily be an evolving one because every needed element may not be either known or technically feasible at this time. All telecommunications providers should be

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<sup>5</sup> When an obligation is imposed on a requesting telecommunications provider, as in Section 251(c)(1), it is done so explicitly

allowed to request additional points of interconnection and elements, as their needs require. If the local exchange carrier refuses such requests for additional points of interconnection and elements, the burden should be on the local exchange carrier to show why it cannot provide interconnection at such additional points.

Principle #4: TSLRIC should be the pricing standard for unbundled network elements, interconnection, collocation, and reciprocal compensation. NPRM at ¶¶123-154, 226-244.

It is important to remember that the existing local telephone companies ("telcos") continue to have monopoly control over their telephone markets. Consequently, even if the Commission does a stellar job in designing its Telecom Act implementation rules, those efforts will be largely meaningless unless the Commission prevents these telephone companies from charging inflated prices. To accomplish this objective, the Commission must establish "pricing policies that 'replicate market-based incentives and prices' and thereby 'ensure the availability to consumers of goods and services at lower overall cost' and 'an efficient level of innovation ... as well as the efficient entry of new firms' " <sup>6</sup> TSLRIC (Total Service Long Run Incremental Cost) is a forward looking pricing standard which provides for recovery of competitive costs, including a reasonable profit, common, and joint costs.

A properly deployed TSLRIC pricing scheme requires that common costs be disaggregated on a service-by-service basis. Unlike an embedded base cost standard, the TSLRIC standard is widely accepted as the allowing the carrier to competitively price its services against new entrants -- assuring that entry will be economically rational. Embedded base costing standards may result in artificially higher (or lower) prices based on "book" entries that have little

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<sup>6</sup> See Comments of AT&T Corp., filed herein May 16, 1996 at 48.

relation to the incumbents economic costs of providing the service. The use of embedded costs will deter efficient entry and encourage inefficient entry because the resulting prices have little to do with the current or future costs of production. In contrast, TSLRIC targets prices at levels more akin to those that would exist in a competitive setting.<sup>7</sup> Also, “bill and keep” arrangements would provide the Commission with an interim solution until TSLRIC-based reciprocal compensation mechanisms are developed.

To reduce the burden of imposing TSLRIC on smaller local exchange carriers (less than two percent of nationwide access lines), the Commission can provide those carriers with an option of employing a “benchmark” for interconnection, unbundled elements, collocation, mutual compensation, and access charges based on a national average for larger local exchange carriers.

**Principle #5:** Resale should be provided with such functionality and quantity to resellers such that such resale may be transparent to the reseller’s end users when compared to the non-resold version of the service, and at wholesale prices that are determined as provided for in the Telecom Act NPRM at ¶¶172-188, 196-197

The Commission should require that resold retail services must be provided with such operational support services as needed so that there is no perceptible difference from an end user’s perception, whether that end user buys from a monopoly LEC or reseller. In determining the wholesale price, the Commission should prohibit any increase in the wholesale prices based on the costs of compliance with the requirements of the Act. Also, the Commission should ensure that incumbents do not define or otherwise describe services to be resold in such a manner as to

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<sup>7</sup> Also, it will be equally important for the Commission to use a TSLRIC pricing scheme to ensure that access charges will be relieved of both implicit and explicit subsidy components. Eliminating these subsidies will maximize consumer benefit as competitive entry increases and rates decrease.



exclude - at the incumbent's option - competing carriers from market segments.<sup>8</sup>

Conclusion.

If the goals of the Congress to promote competition and secure lower prices are to be achieved by the Commission, these Ex Parte Consensus Comments present the appropriate compromises and balances necessary to fairly implement the interconnection provisions of the Telecom Act. The issues put forth in this proceeding are not ones that the Commission can decide by splitting the difference between the various positions it has received. If the captive ratepayers of the local telephone monopolies are to receive the benefits of meaningful competition and lower prices made possible by the Congress, then the Commission will have to disregard the "keep us whole" rhetoric of those monopolies and make the correct decisions. These Ex Parte Consensus Comments cannot be compromised unless the Commission wants to risk the surrender of the telecommunications industry to a monopoly dominated market structure with, as best, minor fringe competitors.

Respectfully submitted,

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July 17, 1996

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<sup>8</sup> In its Comments in this proceeding, for example, SBC contends that its Centrex service is defined with "inherent limitations" so that it may be offered only within a contiguous property.

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**ATTACHMENT A**

\* **America's Carriers Telecommunication Association** ("ACTA") was founded in 1985, and represents over 175 facilities-based and switchless long distance carriers. ACTA was the first carrier association to be built upon a grass-roots, member-driven structure.

\* **American Petroleum Institute** ("API") is a national trade association representing approximately 300 companies in petroleum and natural gas industries. The API Telecommunications Committee, a standing committee of the organization's Information Systems Committee, regularly participates in state and federal proceedings affecting domestic and international services used by member companies

\* **Association of Telemessaging Services International** ("ATSI") represents 640 telemessaging service bureaus providing live telephone answering services and voice mail to over half of the 800,000 customers served by telemessaging service bureaus national wide. Over ninety-five percent of ATSI's members qualify as small businesses and over sixty percent are women owned and operated business enterprises.

\* **Call America**, founded in 1983, is a small long distance reseller based in Mesa, AZ, with \$2 million in annual revenues

\* **Call America Business Communications** is a long distance reseller serving California.

\* **Chadwick Telephone** is a small long distance reseller serving eastern Pennsylvania.

\* **Computercations Plus Company** provides customized hardware, software and service solutions for companies and organizations with telecommunications, networking and related computer problems and opportunities.

\* **Consumer Federation of America** ("CFA") is a non-profit association of some 240 pro-consumer groups, with a combined membership of 50 million, that was founded in 1968 to advance the consumer interest through advocacy and education.

\* **Greater Washington Area Chapter of The Cultural Environment Movement** is a coalition of organizations and individuals representing a wide range of social and cultural interests but sharing common goals. Of prime importance is ensuring the generation of and access to diverse information so as to maximize fairness and diversity in cultural policy-making.

\* **International Communications Association** ("ICA") is a non-profit organization, whose approximately 500 member companies and institutions comprise the largest association of telecommunications users in the world. Most ICA members spend at least \$1 million per year on telecommunications services and equipment, and on average their collective expenditures approach \$30-billion. ICA speaks from a telephone customer perspective that is broadly informed on the state of the telecommunications industry in the United States

\* **Michigan Consumer Federation** is a coalition of thirty organizations representing over 400,000 Michigan residents. It was founded in 1991 to advocate for the interests of Michigan consumers in the shaping of public policy on issues before the Michigan Legislature, state executive branch agencies, the United States Congress, and federal regulatory bodies.

\* **National Retail Federation ("NRF")** is the world's largest retail trade association with registered 1995 sales of more than \$2.3 trillion. NRF is an umbrella organization whose members comprise the leading department, specialty, discount, mass merchandise and independent stores, as well as three dozen national and 50 state associations.

\* **New York Citizens Utility Board ("New York CUB")** is a grass-roots, not-for-profit consumer group representing millions of New York consumers.

\* **Telephone Electronics Corporation** is an interexchange reseller affiliated with small independent telecommunications companies.

\* **U.S. Long Distance Corporation** is a diversified long distance company servicing the southwestern states with over \$300 million in annual revenues.

\* **US Wats** is a long distance reseller headquartered in suburban Philadelphia, PA.

\* **Washington Telecommunications Association for cost-based and Equitable Rates ("TRACER")** is an association of large users of telecommunications services. It includes among its members manufacturing, forest products, financial and health care firms.